BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

Complaint No. CC006000000490389

VAIBHAV SINGH **...COMPLAINANT**

Vs

ACCORD BUILDERS **...RESPONDENT**

MahaRERA Project Registration No. P51800009440

O R D E R
(18.12.2025)
(*Date of Hearing: 17.12.2024)*

Coram: Shri. Ravindra Deshpande, Member 2, MahaRERA

Adv. Shadab Jan for Complainant
Adv. Namrata Powalkar for Respondent

1. The Complainant has filed the present complaint on 07.05.2024 seeking directions against the Respondent to execute and register an Agreement for Sale with respect to Unit No. B-1101 along with 1 car park space (hereinafter referred to as the **"said flat"**) in the project known as **"Omkar Meridia"** situated at BKC Crossing, P. K. Marg, Kurla West, Mumbai – 400 070 or to execute and register and Agreement for Sale with respect to a Unit with same layout as the said flat in the project admeasuring not less than 1236 sq. foot carpet area along with 1 car park at the same or any higher floor; or in the alternative to direct the Respondent to make payment of sums amounting to Rs. 52,45,355/- alongwith interest at 12% per annum from 25.12.2012 till date of filing of the complaint and further interest from the date of filing the complaint till realization.
2. In short facts of the complaint can be narrated as under:
3. During December 2012, the Complainant was approached by the sales team/property broker network of the Respondent whereby they presented "Omkar Meridia" which is registered under the name "Meridia" with MahaRERA under MahaRERA Project Registration No. **P51800009440** (hereinafter referred to as the

"said project") as a very attractive opportunity to buy a house in Mumbai. The Complainant was assured that the project would be ready for possession/occupation in 3 years as all permissions were already in place.

4. On 25.12.2012, the Complainant submitted an Application Form to the Respondent for booking of the said unit upon making an initial payment of Rs. 10,78,250/-. As per the Application Form, the total purchase price of the said unit was Rs. 2,17,52,400/-. The said initial amount was paid by Cheque No. 029084 dated 25.12.2012 drawn on HSBC bank which was duly accepted and acknowledged by the Respondent vide acknowledgment receipt dated 27.12.2012.
5. Pursuant to the above, the Complainant entered into further discussions with the Respondent and finalized the agreement value of the said unit at Rs. 2,06,94,000/-. Upon such confirmation, the Complainant made a further payment Rs. 31,67,105/- to the Respondent vide Cheque dated 16.01.2013 bearing No. 029085 drawn on HSBC Bank, New Delhi. The said payment was duly accepted and acknowledged by the Respondent.
6. On 26.02.2013, the Complainant also paid a sum of Rs. 10,00,000/- in cash towards parking. Thereafter, as on 26.02.2013, the Complainant had made a total payment of Rs. 52,45,355/- i.e. the Deposit Amount towards booking of the said unit.
7. In view of the above, and in terms of the Application Form submitted by the Complainant, it was expected that the Respondent would take further steps for completion of the transaction including but not limited to issuance of Allotment Letter as well as execution/registration of the said Agreement. However, there was no such steps taken by the Respondent towards completion of the transaction which constrained the Complainant to make numerous follow-ups with the representatives of the Respondent.
8. After almost 2 years from the date of acceptance of the Deposit Amount, the Respondent finally addressed an email dated 20.09.2014, inter alia, admitting the delay on its part as well as assuring the Complainant that the formalities for allotment of flat including execution of the sale agreement would be concluded within 20 to 25 days.
9. However, even after making the above assurance there was no further steps taken

by the Respondent towards issuance of allotment letter or execution of sale agreement. The Complainant got an inkling that maybe the said project does not have the necessary approvals and confronted the Respondent regarding the same. However, the Respondent emphatically denied any such problems and intimated that they were duty bound to complete the said project within the promised timelines. In view of the above and after a delay of almost 2 years, the Respondent addressed email on 05.12.2014 inter alia once again admitting its delay in completion of the process and assuring its readiness for issuance of the Allotment Letter.

10. Once again no further steps were initiated by the Respondent to either issue any Allotment Letter or share the draft of Agreement for Sale enabling the Complainant to take necessary steps for making payment of balance amount.

11. After a prolonged delay of more than 5 additional months and several months after receipt of the Deposit Amount from the Complainant, the Respondent in its email dated 21.05.2015 inter alia shared the draft Allotment Letter and cost sheet shared by the Respondent recording the amounts paid by cheque towards the booking of the said flat, the said cost sheet did not reflect the sum of Rs. 10,00,000/- paid by the Complainant in cash towards parking. In response thereto, the Complainant promptly replied on 29.05.2015 inter alia seeking clarification on the proposed timeline for completion of the said project and handover of possession of the said flat.

12. The Complainant addressed an email dated 29.05.2015 inter alia recording the above omission of not acknowledging the payment of Rs. 10,00,000/- by the Complainant and calling upon the Respondent to make necessary corrections in the cost sheet to reflect such payment of Rs. 10,00,000/- by the Complainant. This email of 29.05.2015 was duly acknowledged by the Respondent vide its email dated 30.05.2015 wherein the Respondent sought two days' time to give answers to the concerns raised. Therefore, the receipt of Rs. 10,00,000/- towards parking charges has been admitted by the Respondent.

13. After a considerable amount of delay, the Respondent replied to the concerns/issues raised by the Complainant via E-mail dated 06.06.2015. Notably, the said email conspicuously was silent on the issues by the Complainant on the aspect of the

parking charges. However, in this email, the Respondent has not raised any protest or denial on the aspect of payment of Rs. 10,00,000/- towards parking charges. Given the circumstances, the Respondent deliberately with malicious intent and dishonest intentions ignored the issue related to payment of Rs. 10,00,000/- in cash towards parking charges.

14. Instead, in view of the queries raised by the Complainant, the Respondent vide email dated 06.06.2015 confirmed that the sale agreement will be executed on or before the date of possession of the said flat and that a formal Allotment Letter would be issued to confirm booking of the said flat in the said project prior to such execution. More importantly, it was also indicated that the date for project completion would be November 2016 to April 2017.

15. Despite the above assurance, the Respondent failed to take any steps or action for issuance of the Allotment Letter. It was only after multiple requests and follow-ups made by the Complainant that the Respondent more than 2 years even later finally issued Letter of Allotment dated 26.07.2017 in favour of the Complainant inter alia confirming the booking of the said flat in favour of the Complainant for a purchase price of Rs. 2,17,52,500/-. Effectively, the Allotment Letter was issued for the first time more than four and a half years after the application had been made and Deposit Amount paid by the Complainant. Notably, even prior to coming into effect of the Real Estate (Regulation and Development) Act (hereinafter referred to as the **"said Act"**), the Respondent was required to execute an Agreement for Sale with the Complainant under the provisions of the MOFA, 1963. Therefore, the Respondent is in violation of the provisions of the said Act and the regulations framed thereunder.

16. Although as per the Letter of Allotment, the possession date for the said unit was promised was October 2017, no steps were taken by the Respondent for execution of sale agreement as required under the said Act. Needless to state, it is only upon execution of such Agreement that any further amount towards the purchase price of the said unit would have been payable. In fact, even prior to execution of sale agreement, the Respondent had already received the Deposit Amount which was in excess of 10% of the purchase price for the said flat.

17. Another year elapsed and on 20.08.2018, the Respondent for the first time informed

the Complainant that Occupation Certificate for the said flat has been received by the Respondent.

18. Since the agreement for sale of the said flat was yet to be executed and the Complainant had already made payment of the Deposit Amount which was far in excess of 10% of the final purchase price, there was no question of the Complainant making any further payment until execution of the sale Agreement.

19. Accordingly, both parties agreed that the Agreement for Sale be finalized thereby enabling the Complainant to make payment of the balance amount under the Allotment Letter.

20. In view of the above, on 30.10.2018 (almost six years after the application had been made and Deposit Amount paid by the Complainant), the Respondent for the first time shared draft registration agreement with the Complainant for the purpose of his comments and review.

21. In view of the above, the Complainant addressed in email on 06.11.2018 inter alia communicating that his comments on the said Agreement shall be shared once the same is reviewed at his end. It was further communicated in explicit terms that the Agreement would be instituted on the condition that the terms as set out in the draft agreement are acceptable to the Complainant.

22. Notwithstanding the fact that the Deposit Amount was already paid and that the draft agreement was shared only a few days ago (that too after a prolonged delay of 6 years by the Respondent), on 13.11.2018, the Respondent addressed its even dated email inter alia serving a copy of purported Demand Letter along with a Pre-termination Letter to the Complainant not only calling upon the Complainant to make payment of the balance amount for the said flat but also threatening that the allotment would be cancelled if such payment is not made in terms of the demand.

23. Considering that the demand made and the threat of termination was illegal and unjustified, the Complainant addressed its response on 13.11.2018 and 20.11.2018 inter alia raising a strong objection to the conduct of the Respondent. By the said response, it was explicitly pointed out that issuance of pre-termination letter in the midst of active communications between the parties and especially at the stage where draft agreements were shared by the Respondent after much delay was only

an arm twisting tactic.

24. In response to the aforesaid, the Respondent addressed its email dated 16.11.2018 inter alia admitting its delay and also requesting that the Complainant proceeds with the registration of the sale agreement. Accordingly, it is clear by this email that the Respondent had agreed to proceed with the execution of the said agreement thereby giving a go by to its notices addressed on 13.11.2018.

25. In view of the above, on 21.11.2018, the parties held a telephonic conference in which the Respondent clarified that the termination letter was merely procedural and there was no question of acting upon it by the Respondent. In line with the above discussion, on 23.11.2018, the Respondent addressed an email and confirmed the above position in writing. Once again, the Respondent expressed its willingness to execute and register the agreement for sale in order that the balance payment for the said flat could be made by the Complainant.

26. Since the Respondent had clarified and confirmed its position as above, on 29.11.2018, the Complainant addressed its email whereby it provided its detailed comments highlighting several onerous, unreasonable and one-sided provisions in the draft agreement.

27. Considering the urgency shown by the Respondent it was expected that the Respondent would provide its comments/response to the observations made in the said email at the earliest enabling the parties to finalize the draft agreement and proceed for registration of the same. However, the Complainant received no response from the Respondent on the above and had in fact addressed multiple reminders vide email dated 18.01.2019.

28. On 24.01.2019, the Respondent shared its comments and observations on the draft agreement with the Complainant. Notably, most of the observations and comments made by the Complainant were found to be rejected by the Respondent. Accordingly, the Complainant sought legal opinion of his lawyers prior to issuing any response to the Respondent. The above was duly communicated to the Respondent on 05.02.2019 to which the Respondent did not raise any objections.

29. After having shared its response and comments on the draft agreement on 09.04.2019, the Respondent did not address any communication or issue any further

response either accepting or rejecting the changes proposed by the Complainant to the draft agreement. Accordingly, multiple reminders and email seeking to follow up with the Respondent were addressed by the Complainant on 14.06.2019, 19.07.2019 and on 22.11.2019.

30. In view of the above, the Respondent finally addressed response on 22.11.2019 inter-alia admitting its delay in finalising the Agreement and seeking further time to seek legal advice on the changes suggested by the Complainant in order to finalise the draft agreement for execution. Accordingly, on 27.11.2019, the Respondent addressed its email providing its comments on the draft Agreement.

31. As is evident from the above, the parties herein had not executed the Agreement for Sale of the said flat and were still negotiating with each other. Furthermore, from the above facts, it is also clear that the delay in finalising the Agreement for Sale was caused solely by the Respondent and that the Complainant has demonstrated its readiness and willingness to proceed with the transaction at all stages.

32. While the parties were in the midst of negotiations, for no just reason or cause, the Respondent issued and addressed its notice dated 09.12.2019, inter-alia, demanding payment of balance amount towards the said unit failing which the Deposit Amount would be forfeited in terms of the Allotment Letter.

33. Upon the receipt of the above notice, the Complainant immediately contacted the representatives of the Respondent to seek an explanation for such contrary conduct of the Respondent wherein on the one hand, the Respondent continued to regularly engage with the Complainant to reach common ground on the clauses in the proposed Agreement and on the other hand, issued the aforesaid notice in stark contravention to the understanding between the parties. Upon seeking such explanation, the representative of the Respondent (Ms. Carolyn Solanki) brushed aside the insuance of the above notice as mere procedural formality and exhorted the Complainant to disregard the same. Therefore, in view of such assurance and clarification, the Complainant did not take any further steps or address any letter/response.

34. On 03.01.2020, the Respondent issued a purported Termination Notice inter-alia forfeiting the Deposit Amount. Notably, the said notice is issued on the basis of

certain letters/notices referred therein which have neither been addressed nor received by the Complainant. Furthermore, the sole reason on the basis of which the purported Termination Notice has been issued by the Respondent is non-payment of the balance amount.

35. The termination of allotment and forfeiture of Deposit Amount by the Respondent is illegal and contrary to the said Act. More particularly, the action of the Respondent forfeiting the Deposit Amount even prior to execution of agreement for sale is contrary to the said Act.

36. The provisions of the Allotment Letter for forfeiture of the Deposit Amount are illegal, unilateral and unconscionable. Therefore, such a provision in the Letter of Allotment cannot be enforced against the Complainant.

37. After admittedly being in active negotiation with the Complainant, the Respondent had given a go-by to the demand and the pre-termination letters addressed to the Complainant. In fact, such demand and pre-termination letters could not have been issued prior to the sale agreement. Therefore, without prejudice to the contention that the forfeiture was illegal and void ab initio, the termination and forfeiture has been effected even in contravention to the procedure as set out in the Allotment Letter itself.

38. In view of the above, and more importantly considering the fact that the forfeiture of the Deposit Amount has been effected by the Respondent prior to execution of any agreement for sale, such forfeiture by the Respondent is illegal and the Complainant is ready and willing to make payment of the balance sale consideration as per the allotment letter dated 26.07.2017.

39. The respondent has filed its reply on 28.10.2024 and resisted the present complaint. The brief of the defense case of the Respondent is as follows:

40. It was submitted that the captioned Complaint is filed under section 18 and 31 of the said Act seeking refund of the amount along with interest with an alternate prayer to execute and register Agreement for sale and that the Complainant is not entitled for any relief under Section 18 as the intimation of possession was offered on 08.01.2018 after receipt of OC dated 31.07.2017 of the said flat which was within the stipulated timelines given under Allotment Letter dated 26.07.2017. Hence, the

complaint is not maintainable as the possession of the said flat was offered before filing the complaint. Section 18 shall apply only if the project is incomplete and once the project is complete or possession is offered, the said provision ceases to apply. Hence this complaint is not maintainable as after termination of the said flat on 03.01.2020, the said flat was sold to third party Mr. Gokul Ramrao Satpute and Mrs. Laxmi Gokul Satpute on 21.08.2020 which was never disputed by the Complainant and after a period of 4 years, the Complainant is now coming forward claiming refund with an alternate prayer to execute Agreement for Sale under section 18 and 31 of the said Act which is not applicable as there was no delay in possession nor any breach on the part of the Respondent.

41. The said flat was booked on 08.01.2013 under 20:80 scheme wherein 19.9% of the total consideration of the said flat was to be paid on booking and balance 80.01% was to be paid on possession which is also mentioned in clause 5 (b) of the said Allotment Letter. The Agreement for sale was to be executed on or before possession which was never executed as the Complainant deliberately did not come forward to execute and register Agreement for sale just to delay in making payment towards the consideration amount, due to which the Respondents were compelled to terminate the booking of the said flat by Termination Letter dated 08.01.2019.

42. The Respondent by demand dated 08.01.2018 raised towards intimation of possession, the Complainant was called upon to make the balance payment towards the possession, execute and register the Agreement for Sale and take the possession of the said flat. The Complainant ignored the same and did not come forward to take possession by making payment towards the purchase price. Further, by reminders dated 03.04.2018, 16.05.2018 and 06.08.2018, the Respondent called upon the Complainant to make the payment and take the possession, however, the same were ignored. By Pre-termination letter dated 13.11.2018, the Respondent then gave last chance to the Complainant to make the payments in 15 days and by Termination letter dated 08.01.2019, the Respondent terminated the Complainant's booking of the said flat. Further, the Complainant assured the Respondent that he will pay the outstanding and requested to revoke the Termination letter dated 08.01.2019 (Inadvertently mentioned as 08.01.2018), the Respondent therefore gave another

chance to the Complainant. To the utter shock and surprise, instead of making the payments, the Complainant raised queries related to the Agreement for Sale which were answered by the Respondents by email dated 24.01.2019 and then requested the Complainant to come forward for the execution and registration of the same. The Complainant once again started raising the same queries by email dated 09.04.2019 and again insisted on making changes to the Agreement for Sale which was not possible. The Complainant clearly was financially incapable of making the payment and therefore delayed making payments by raising the same queries time and again. The Respondent had no choice but to once again terminate the booking by Termination letter dated 03.01.2020 and forfeit the amount as per clause (10) of the said Allotment Letter as the Complainant deliberately delayed in coming forward to make the payments for almost 2 years by raising queries on Agreement clauses which were already answered by the Respondents.

43. The Complainant has blocked the flat for almost 7 years from the date of booking and avoided making payment by raising queries on clauses of Agreement for sale which were answered by the Respondent several times. The Complainant has falsely alleged that the clauses of Agreement for Sale are unilateral and one sided to avoid making payments and requested to dismiss the captioned Complaint with costs.

44. The present complaint was listed before this Authority on 17.12.2024, when both the parties were represented by their Advocates. During the hearing, it was submitted by the Complainant that there is no AFS executed between the parties therefore there cannot be forfeiture in law and that in the allotment letter there is no clause for forfeiture, whereas, the advocate for Respondent submitted that the complaint is not maintainable and that the Respondent has sent termination notice on 03.01.2020 as allotee was defaulter and that the Respondent has sold the said flat to third party on 20.08.2020 and possession was also handed over on 07.09.2020. Thereafter, in April 2022, the present complaint was filed by the Complainant which is not maintainable. The parties were given the liberty to upload their written arguments on or before 07.01.2025. Thereafter this matter was directed to be reserved for order.

45. Pursuant to the direction of this Authority, the Respondent filed its Written Arguments on 07.01.2025, wherein, mainly the Respondent has repeated and

reiterated the contents of its reply, hence, the same are not repeated herein for the sake of brevity.

46. The Complainant has uploaded his written submissions on 08.01.2025, wherein, mainly the Complainant has repeated and reiterated the contents of his complaint, hence, the same are not repeated herein for the sake of brevity. The brief submissions of the Complainant are as follows:-

47. The Respondent has illegally and in contravention to the provisions of the said Act as well as the regulations framed thereunder forfeited the part-payment of Rs. 52,45,355/- made towards consideration for the said flat even prior to execution of any agreement for sale as contemplated under the said Act.

48. In the Affidavit in Reply filed by the Respondent, it has been revealed that the said flat has been sold to a third party. Such factum of the said flat having already been sold by the Respondent to a third party has come as a surprise to the Complainant who had no knowledge about such sale to third party prior to such date. This leaves the Complainant with only one option which is to make submissions for seeking a refund of part-payment made to the Respondent.

49. The following grounds were made in support of the reliefs by the Complainant Viz. (i) Respondent has committed undue delay not only in completion of the said project but also in execution of sale agreement and taking necessary steps after acceptance of application money/part-payment; (ii) Part payments made towards purchase price cannot be forfeited in absence of Sale Agreement entered between the parties; (iii) Part payments towards purchase price cannot be treated as / is not earnest money; (iv) Respondent has sold the said flat at a profit without any intimation to the Complainant and thus any forfeiture is unjustified as it would allow the Respondent to secure double benefit from the said flat;

50. The Respondent has raised a frivolous objection, inter alia alleging that the present complaint is not maintainable since the Respondent has not entered into an agreement for sale with the Complainant. It is further alleged that mere issuance of letter of allotment does not entitle the Complainant to file the present Complaint under Section 18 of the said Act.

51. Rights of allottees under Section 18 of the said Act are unconditional and absolute.

Accordingly, Complainant continues to be entitled for his rights under Section 18 of the said Act. Careful perusal of Section 18 further reveals 3 that it does not restrict any time limit for the allottee to claim accrued rights under Section 18. In any case, the cause of action for filing the present complaint arose on 03.01.2020 when the Termination Notice cancelling allotment and forfeiting the consideration paid was issued by the Respondent. Considering the order passed by the Hon'ble Supreme Court with regards to Cognizance for Extension of Limitation, the period from 15.03.2020 to 28.02.2022 stands excluded for the purposes of computation of time period and limitation. Hence, considering the above exclusion, the present complaint being filed within 3 years from the date when the cause of action accrued in favor of the Complainant.

52. On 25.12.2012, the Complainant executed an Application Form in favour of the Respondent for booking of the said flat. Pursuant to the above, the Complainant entered into further discussions with the Respondent and finalized the purchase price of the said flat at Rs.2,27,79,245/-. As on 16.01.2013, the Complainant had made a total payment of Rs.42,45,355/- towards booking of the said flat through cheque and a sum of Rs. 10,00,000/- was paid in cash towards car parking. Despite the above, the Respondent did not take any steps for execution of either the allotment letter or the sale agreement for many years. The Respondent has infact admitted such delay on its part on various occasions and assured issuance of allotment letter. Respondent finally issued the Letter of Allotment dated 26.07.2017 in favour of the Complainant inter alia confirming the booking of the said flat in favour of the Complainant for purchase price of Rs.2,17,52,500/-. By the said Allotment Letter, the Respondent also confirmed acceptance and receipt of the Deposit Amount towards the said flat and adjusted the sum of Rs. 10,00,000 towards parking. Subsequent to the issuance of Allotment Letter, the Respondent obtained registration of the said project under Section 5 of the said Act.

53. On 20.08.2018, the Respondent, for the first time, notified the Complainant that the Occupation Certificate (OC) for the said flat had been received. The Respondent has unequivocally admitted, in their own written submissions on pages 10 and 13, that the date of issuance of the OC is 05.05.2018. This fact is undisputed. However, it is

evident that the Respondent, with dishonest and malicious intent, is deliberately attempting to mislead this Hon'ble Authority by falsely claiming in their Written Arguments (page no. 1, para 2) that the OC was obtained on 31.07.2017—well before the actual date of issuance and within the timeline specified in the allotment letter. This glaring contradiction in their statements is not only misleading but also indicates a deliberate attempt to deceive this Hon'ble Authority. Such conduct cannot be tolerated and must be viewed with the utmost scrutiny, as it exposes the Respondent's malafide intentions to mislead and misrepresent the facts before this Hon'ble Authority.

54. The Respondent has admitted that the said flat has been re-sold to a third party after forfeiture and termination of Allotment Letter. This clearly shows that the Respondent has not suffered any loss on account of termination of the Allotment Letter of the said unit. Since the Respondent has not suffered any loss on account of termination of Allotment Letter, the question of adjustment and recovery of any agreed liquidated damages from the Complainant will not arise.

55. Considering the rival contentions of the parties, following points arise for my determination. My findings thereon are recorded as under for the reasons stated below:

No.	Points	Findings
1	Whether the complainant is entitled to the reliefs claimed?	Partly affirmative
2	What Order?	As per Final order

REASONS

56. At the very outset, it is imperative to state here that disputed facts of the parties. It has been alleged by the Complainant earlier the purchase price of the said flat was Rs. 2,27,79,245/- and that an amount of Rs. 10,00,000/- was paid by the Complainant to the Respondent towards car parking in cash, the details of which was not incorporated in the cost sheet shared by the Respondent with the Complainant whilst sending the same alongwith draft allotment letter to the Complainant in email

dated 21.05.2015. On account of which, the Complainant sought clarification with regards to the same from the Respondent. In pursuance of which, as per the contention of the Complainant in Allotment Letter dated 26.07.2017, an amount of Rs. 2,17,52,500/- was shown as Final Purchase Price considering the cash payment of Rs. 10,00,000/- by the Complainant towards car parking. However, on perusing the Booking Form annexed to the complaint of the Complainant, it is seen that an amount of Rs. 2,17,52,400/- has been shown to be the total consideration for the purchase of the said flat and hence, the contention of the Complainant in this behalf does not sustain. Secondly, it is the contention of the Respondent that the Complainant in the present complaint has sought reliefs under Section 18 and 31 of the said Act, however, on perusal of the prayers, it is seen that the Complainant has sought directions against the Respondent to execute and register Agreement for Sale with respect to the said flat and/or alternatively to execute and register for any other unit with same layout as the said flat in the project admeasuring not less than 1236 sq. foot carpet area along with 1 car park at the same or any higher floor; or in the alternative to direct the Respondent to make payment of sums amounting to Rs. 52,45,355/-. Hence, it cannot be said that the Complainants have sought reliefs under Section 18 of the said Act only. Admittedly, the Complainant has paid an amount of Rs. 42,45,355/- towards the said flat. Prima facie, it appears that the Complainant has sought relief under Section 13 of the said Act. Hence, it has become imperative that provisions of Section 13 be perused. Section 13 deals with "No deposit or advance to be taken by promoter without first entering into agreement for sale."

"…13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) not relevant to the present case…"

57. The Section 13(1) prohibits any promoter from accepting a sum more than ten per cent of the cost of the flat as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register

the said agreement for sale, under any law for the time being in force.

58. The Complainant has relied upon following judgments:- (i)Bharat Narendra Mistry vs Realgem Buildtech Pvt. Ltd. – Appeal No. AT00600000053625 of 2022, wherein, it was inter alia held that the said Act being a welfare legislation, has afforded protection and remedies not only to allotees with whom promoters have entered into a formal agreement for sale but also such persons in whose favor allotment letters are issued. (ii) Kirankumar Jathar vs Bharat Infrastructure & Engg. Pvt. Ltd. wherein it was held that Rights of allottees under Section 18 of RERA, 2016 are unconditional and absolute. Accordingly, Complainant continues to be entitled for their rights under Section 18 of the said Act. Careful perusal of Section 18 further reveals that it does not restrict any time limit for the allottee to claim accrued rights under Section 18 as has also been observed and concluded by MahaRERA itself in the impugned order itself. In my opinion, the said judgments are not applicable in the present case, since in my opinion, present complaint is filed by the Complainant seeking reliefs in terms of Section 13 and not under Section 18 and if reliefs are not granted in terms of Section 13 then to refund the amount paid by the Complainant. However, the Complainant has not filed complaint under Section 18 of the said Act. The Complainant has relied upon the judgment passed in the matter of Dinesh Humne, in order to prove that the termination of allotment and forfeiture of Deposit Amount by the Respondent is illegal and contrary to the said Act, in my opinion, the said judgment is not applicable in the present case since the said order has been set aside by the Hon'ble Bombay High Court as per the Consent Order and as a result, the said order is not in existence anymore. Lastly, the Complainant has relied upon the judgment passed in the matter of Godrej Properties Limited vs Amit Agarwal, wherein, it was held that in order to justify forfeiture of advance money the terms of the contract must be clear and explicit to that effect. Part payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of consideration and not intended as "earnest money" then the forfeiture clause will not apply. In my opinion, the said judgment applies in the present case since the Complainant has parted with almost 20% of the total consideration amount and not only the booking

amount/earnest money.

59. In the present case, admittedly, the Complainant has booked the said flat in the year 2012 by paying an amount of Rs. 42,45,355/- as on 2013 which was less than 20% of the total consideration amount. As per the prevalent MOFA Act, it was incumbent upon the Promoter to have register the Agreement for Sale on receipt of 20% of the total consideration amount. However, the amount of Rs. 42,45,355/- was not amounting to 20% of the consideration value at that relevant time. However, admittedly, the Allotment Letter with respect to the said flat was issued in favour of the Complainant on 26.07.2017, which was after the enactment of the said Act and hence, it was incumbent upon the Respondent to have entered into Agreement for Sale with the Complainant as soon as the said Act came into force as the amount of Rs. 42,45,355/- was more than 10% of the total consideration amount. Not only this, as per the contention of the Complainant on 30.10.2018, the draft of Agreement for Sale was shared by the Respondent to the Complainant and till date an Agreement for Sale has not been executed even though an amount of Rs. 42,45,355/- was lying with the Respondent from January 2013 itself. As a result, the Respondent has violated the provisions of Section 13 of the said Act.

60. So far as regards contention of the Respondent with regards to Complainant's complaint being not maintainable under Section 18 of the said Act on account of the fact that the intimation of possession was offered to the Complainant on 08.01.2018 after receipt of OC dated 31.07.2017 of the said flat which was within the stipulated timelines given under Allotment Letter dated 26.07.2017 as the possession of the said flat was offered before filing the complaint is concerned, it is seen that even though the OC was received on 31.07.2017, the Complainant was informed about the intimation of OC only on 20.08.2018, as per the email addressed by the Respondent and that the discussions were going on between the parties with regards to the clauses of Agreement. Furthermore, it is the contention of the Respondent that the complaint filed by the Complainant is not maintainable since the same has been filed after notice of possession was received by the Complainant i.e. on 08.01.2018/2019, however, it is the contention of the Respondent that the transaction of sale purchase of the said flat was terminated vide Termination Notice dated 03.01.2020, hence, the

contention of the Respondent in this behalf does not hold good. In fact, it is seen that the Complainant has filed the present complaint in pursuance of the receipt of termination Notice dated 03.01.2020. Moreover, the Complainant had booked the said flat in the year 2012 by paying an amount of Rs. 42,45,355/- as on 2013 which was less than 20% of the total consideration amount. As per the prevalent MOFA Act, it was incumbent upon the Promoter to have register the Agreement for Sale on receipt of 20% of the total consideration amount. However, the amount of Rs. 42,45,355/- was not amounting to 20% of the consideration value at that relevant time. However, admittedly, the Allotment Letter with respect to the said flat was issued in favour of the Complainant on 26.07.2017, which was after the enactment of the said Act and hence, it was incumbent upon the Respondent to have entered into Agreement for Sale with the Complainant as soon as the said Act came into force as the amount of Rs. 42,45,355/- was more than 10% of the total consideration amount. As result, the Respondent has violated the provisions of Section 13 of the said Act.

61. Not only this, the whilst sending the pre-termination letter or the termination letter as the case may be, the Respondent has contended in its reply that by virtue of Clause 10 of the Allotment Letter on account of the failure of the Complainant to make payment of the balance consideration and neglect to execute and register the Agreement for Sale, the amount paid by the Complainant stood forfeited and the said flat was sold to a third party and possession of the same was also parted with and the selling of the said flat was not challenged by the Complainant. Whereas, it is the contention of the Complainant that the Complainant got to know about third party rights being created with respect to the said flat only when the Respondent declared the same in the reply as a result of which executing and registering Agreement for Sale with respect to the said flat had become futile and only option remained with the Complainant was that of refund. Moreover, on perusal of the Clause 10 of the Allotment Letter, it is seen that as per the said clause, the Respondent was entitled to without prejudice to their rights and entitlements receive or recover from the Complainant interest on the outstanding amount @ 1.5% per month or part thereof from the expiry of 15 days from the date of the demand

notice issued by the Respondent till the date of actual payment in case of failure of the Complainant to pay any amounts payable under the Allotment Letter including purchase price and/or service tax and/or VAT and/or GST and/or any other taxes as applicable. Hence, on bare perusal of the said clause, it is seen that the Respondent was only entitled to receive interest for failure of the Complainant to pay the amounts as per the terms of the Allotment Letter. The Allotment Letter nowhere grants the Respondent entitlement to forfeit the entire amount paid by the Complainant under the guise of Clause 10 of the Allotment Letter. As a result, in my opinion, it was incorrect on the part of the Respondent to forfeit the entire amount paid by the Complainant towards the purchase price of the said flat. Refund of the amount as claimed by the Complainant cannot be granted either under Section 13 or 18 of the said Act or under any other provision of the said Act.

62. Considering the above facts and object of the said Act is to protect interest of consumer though the claim of the refund from this case is not governed by any specific provision of the said Act considering the object of the said Act, in my opinion, whatever amount is paid by the Complainant to the Promoter/ Respondent towards consideration of the said flat should be refunded to the Complainant as the forfeiture of the entire amount by the Respondent was wrong and also on account of the fact that at this juncture, third party rights with respect to the said flat has already been created and possession of the said flat is handed over to such third party. The fact that the amount paid by the Complainant has been used and benefited by the Respondent from the year 2013 till today cannot be negated. It cannot be ignored that regulations are framed to carry out purposes of the said Act. Regulations 39 of Maharashtra Real Regulatory Authority (General Regulation 2017) is in respect of saving of inherent powers of Authority, and same reads as under:

"Regulations 39 *- Nothing in this Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting ends of justice or to prevent the abuse of the process of the Authority."*

63. Though the claim of the refund is not governed by the specific provision of the said Act, it is necessary to consider the object of the said Act, is to protect the interest of the consumer. The said Act is a social legislation with primary purpose and objective

with legislative intend to safeguard the interest of the allottees and thus, the Respondent cannot be allowed to act contrary to the spirit of the said Act by using the hard earned money of the Complainant without handing over possession of the said flat for which the said money was paid by the Complainant to the Respondent in the first place. Hence, in my opinion the Respondent is required to be directed to refund the amount of Rs.42,45,355/- received by the Respondent from the Complainant towards part consideration of the said flat. Hence Complainant is entitled only to refund of the amount paid by them to the respondents. I, therefore, answer point no. 1 in the partly affirmative and preceding to pass the following order:

O R D E R

1. The complaint is allowed as follows.
2. The respondent is directed to refund an amount of Rs.42,45,355/- to the Complainant within 30 days from the date of this order, failing which simple interest @ 2% above SBI's Highest Marginal Cost of Lending Rate shall be payable thereafter till realization of the amount.
3. No order as to costs.

RAVINDRA PADMAKAR AO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2025.12.18 15:23:54 +05'30'

(Ravindra Deshpande)
Member 2, MahaRERA

Date : 18.12.2025